

The afore-referenced hearing was held and the Findings of Fact, Conclusions of Law and Order are herewith issued in accord with and pursuant to the Indiana Administrative Adjudication Act, IC 4-22-1-1, *et seq.*, and the Indiana Civil Rights Act, IC 22-9-1-1, *et seq.*

Having heard and weighted the testimony of the parties and their witnesses, having examined the documents introduced into evidence, and having given due consideration to the briefs of the parties, the Indiana Civil Rights Commission hereby makes the following Findings of Fact and Conclusions of Law and enters the following Order.

### **FINDINGS OF FACT**

1. The Complainant Sandra Maidlow at all times material hereto was employed by Indiana Bell Telephone Company, Inc., in Evansville, Indiana.
2. The Complainant Elisabeth McCarthy at all times material hereto was employed by Indiana Bell Telephone Company, Inc., in Evansville, Indiana.
3. The Complainant Bobbie Campbell at all times material hereto was employed by Indiana Bell Telephone Company, Inc., in Evansville, Indiana.
4. The Complainants are all female.
5. The Complainants attempted to secure membership in the Respondent Club at time prior to April 15, 1974.
6. The Complainants were refused membership in and by the Respondent Club. Said refusal was occasioned due to the Complainants' sex.
7. The Respondent was organized as a not-for-profit corporation under the laws of the State of Indiana in 1940. It owns a facility consisting of several acres of land used primarily for out-door recreational activities, located near Evansville, Indiana, which is open to its members and their guests only.
8. The purpose, operation and structure of the Respondent were not changed in any way following the passage of the 1964 Civil Rights Act.
9. Membership in Respondent Club is genuinely exclusive: it is limited by the By-laws to male employees of Western Electric, AT&T and Indiana Bell Telephone Company, Inc.
10. The membership in Respondent club meets regularly, at least twice yearly.

11. The Respondent's Club is governed by its membership through the formalities of its constitution and by-laws. The membership elects the board of directors, which in turn, selects the corporation's officers. The elected board sets club policy with input from the general membership.
12. The Respondent's Club maintains regular books and records including a membership roster, which are open for review by its membership.
13. The Respondent's Club sells neither food nor liquor on its premises.
14. The Respondent's Club neither holds itself out as a public accommodation, by, for example, advertising, nor solicits for new members.
15. The Respondent's Club receives no public or quasi-public funding. It is totally supported by dues received from its members. No profit is made which inures to the benefit of individual members.
16. Membership in Respondent's Club does not provide any benefit to its members regarding their employment, *e.g.*, promotion, assignment, *etc.*
17. Complainants Maid low, McCarthy and Campbell filed their complaint-charge of discrimination with the Commission on or about April 15, 1974. Said complaint-charge was assigned to an investigated by the designated local agency.

### **CONCLUSIONS OF LAW AND DISCUSSION**

The public policy of the State of Indiana is to provide all of the citizens equal opportunity for access to public accommodations. IC 22-9-1-2. To effect the implementation of that public policy, the Indiana Civil Rights Commission was created with certain powers and duties, among which duties are to receive and investigate charges of discriminator practices, to hold hearings regarding such charges are filed with it, and to issue findings of fact and appropriate orders. IC 22-9-1-4; IC 22-9-1-6.

The instant charge of discrimination which had been filed alleges discrimination based upon sex in a public accommodation. "Public Accommodation" is defined by the Indiana Civil Rights Act as "...any establishment which caters or offers its services or facilities or goods to the general public." IC 22-9-1-3(m). Conversely, arguendo any establishment which does not cater or offer its services or facilities or goods to the

general public should not be considered a public accommodation". However, the Indiana Civil Rights Act does not contain a specific exemption for private clubs as does Title II of the 1964 Civil Rights Act, 42 U.S.C. § 2000a(e), which states, inter alia:

"Private establishments.

(e) The provisions of this sub-chapter shall not apply to a private club or other establishment not in fact open to the public..."

While not bound thereby, the Commission is obliged to give great weight and value to the many federal decision which have interpreted Title II and defined what is meant by the term "public accommodation" in that that term has not been interpreted or defined by the courts of this State. See *Graves Trucking, Inc. v. B.G. Trucking Co.*, (1972) 151 Ind.App 563, 280 N.E.2d 834, 837; *McFarland v. Phend & Brown, Inc.* (1974) 317 N.E. 2d 461. However that law which has developed based upon Title II's prohibition against discrimination in public accommodation has almost exclusively dealt with racial not sexual discrimination. By analogy, however, that body of law is of merit in determining the private-versus-public character of respondent against which the charge of discrimination has been alleged.

In differentiating between what are "public accommodations" and "private clubs", many factors must be considered. See, for example, *Wright v. Cork Club*, 315 F.Supp 1143 (S.D. Tex. 1970). Initially, the party asserting the private –club-defense bears the burden of proof. *Kyles v. Paul*, 263 F.Supp. 412 (E.D.Ar. 1967), off'd sub nom *Daniel v. Paul*, 395 F.2d 118 (8<sup>th</sup> Cir. 1968), rev'd on other grounds 395 U.S. 298, 89 S.Ct. 1967 (1969); *Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C.*, 397 F.2d 96 (4<sup>th</sup> Cir. 1968); *Wright v. Cork Club*, *supra*.

The Supreme Court has provided only limited guidance for deciding the public accommodation issue, having ruled upon title II cases on few occasions. In *Sullivan v. Little Hunting Park, Inc.*, 396 U.S., 90 S.Ct. 400 (196), the Court was called upon to determine, in part whether the defendant club qualified as a "private club" as it purported to or whether it was a public accommodation. The defendant was a Virginia

nonstock corporation which had been formed to operate a community park and playground for the benefit of families who resided in the area. Membership therein was acquired through residence in the area either by way of property ownership or leasehold and entitled the member to the use of the park's facilities. In rejecting the defendant's contention that it was a "private club", the Court said:

"There was no plan or purpose of  
Exclusiveness. It is open to every  
white person within the geographic area,  
there being no selective element other than race."

396 U.S. at 236

And, citing *Sullivan, id.*, with approval, the Court in *Tillman v. Wheaton-Haven Recreational Ass'n., Inc.*, 410 U.S. 431, 93 S.Ct. 1090 (1973), said:

"But here, as there (*Sullivan*) membership is open  
every white person within the geographic area,  
there being no selective element other than race.  
The only restrictions are the stated maximum  
number of memberships and, as in *Sullivan, id.*,  
at 234, 90 S. Ct. 403, the requirement of formal  
board or membership approval."

410 U.S. at 438

Unlike the respective clubs in *Sullivan* and *Tillman*, the Respondent herein does have a "plan or purpose of exclusiveness." That plan is based upon the employment in a particular field and sex. Indeed, in *Wright v. Cork Club*, *supra*, it was held that membership exclusiveness shall be "on any basis or no basis at all." 315 F.Supp. at 1153. Similarly in *United States v. Jordan*, 320 F.Supp. 370 (E.D.La. 1969), it was held that one criterion for private club status is the selection of membership on the basis of "any genuine qualifications". See also *United States v. Clarksdale, King & Anderson Co.*, 299 F.Supp. 792 (N.D. Miss 1964), *Cornelius v. Benevolent Protective Order of Elks*, 382 F.Supp. 1182 (D.Conn. 1974) (3-judge opinion).

The Respondent Club is governed and managed by its membership in accord with and pursuant to its constitution and by-laws. *Bell v. Kenwood Golf and Country Club, Inc.*, 312 F.Supp. 753 (D.Md. 1970); *Williams v. Fire Rescue Co.*, 254 F. Supp. 556 (D.Md. 1966); *United States v. Jack Sabin's Private Club*, 265 F.Supp. 90 (E.D.La. 1967); *United States v. Richberg*, 398 F.2d 523 (5<sup>th</sup> Cir. 1968).

Respondent passes all tests of self-government and membership control. It holds regular meetings and regular elections; it is governed by the input of the membership; it maintains regular books and records which are open to the membership and it owns its own facility. *Richberg*, supra; *Jordan*, supra; *Bell*, supra.

The receipt by Respondent of no public or quasi-public funds is significant to its contention of not being a public accommodation *Nesmith v. YMCA*, 397 F.2d 96 (4<sup>th</sup> Cir. 1968); *Williams v. Fire Rescue*, supra; *Stout v. YMCA*, 404 F.2d 687 (5<sup>th</sup> Cir. 1968); *Smith v. YMCA*, 316 F.Supp. 899 (M.D.Ala. 1970).

The small number of members would further indicate the private, rather than public, nature of the club as well as the fact that few new members are admitted annually. *Wright*, supra; *U.S. v. Johnson Lake, Inc.*, 312 F.Supp. 698 (M.D.Ala. 1970); *Bell*, supra; *Daniel*, supra.

The Respondent in not having in any relevant way changed its operation following the passage of relevant legislation, including both federal and state civil rights acts, further weighs toward the private character of the club. *Daniel*, supra.

Unlike the situation in *Daniel*, supra Respondent does not have located on its premises a snack bar or other food facility thereby engaging itself in commerce – a further test used to establish Respondent's private, not public character.

Respondent does not advertise and does not allow other outside groups to utilize its facilities. *Solomon v. The Miami Women's Club* 359 F.Supp. 41 (S.D.Fla. 1973); *Bell*, supra; *Wright*, supra.

## **SUMMARY**

Respondent has satisfied its burden in substantiating its “private club” character. Based upon the Finding of Facts and Conclusions of Law, which are supported by the evidence presented in this case, the Respondent Bell Conservation Club is a bona fide private club – not a public accommodation – therefore it does not fall within the jurisdiction of the Indiana Civil Rights Act.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED pursuant to the above Findings of Fact and Conclusions of Law that::

1. The Respondent Bell Conservation Club, Inc., has not committed an unlawful “discriminatory practice” within the meaning and intent of the Indiana Civil Rights Act, IC 22-9-1-3(1).
2. The Respondent Bell Conservation Club, Inc., is not a public accommodation within the meaning and intent of the Indiana Civil Rights Act, IC 22-9-1-3(m).
3. The Complainant filed in this cause by Elisabeth McCarthy, Sandra Maidlow and Bobbie Campbell, should be and hereby is DISMISSED with prejudice pursuant to IC 22-9-1-7(k).

**Signed: December 18, 1977.**